

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MICHELE RICCI,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
<b>VS.</b>	:	
	:	
<b>AETNA, INC., D/B/A</b>	:	
<b>AETNA U.S. HEALTHCARE AND</b>	:	
<b>AETNA LIFE INSURANCE COMPANY,</b>	:	<b>NO. 02-CV-4330</b>
<b>Defendants.</b>	:	
	:	

**ORDER**

**AND NOW**, this                      day of                      , 2003, upon consideration of Defendant Aetna Inc., d/b/a Aetna U.S. Healthcare and Aetna Life Insurance Company's Motion for Enlargement of Time to File an Answer to Plaintiff's Amended Complaint and Plaintiff's Response thereto, it is hereby **ORDERED** and **DECREED** that Defendants' Motion is **DENIED** with prejudice.

**BY THE COURT:**

\_\_\_\_\_  
**J.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<hr style="border: 0.5px solid black;"/> <b>MICHELE RICCI,</b>  <div style="text-align: center;"><b>Plaintiff,</b></div> <div style="text-align: center;"><b>VS.</b></div> <b>AETNA, INC., D/B/A</b> <b>AETNA U.S. HEALTHCARE AND</b> <b>AETNA LIFE INSURANCE COMPANY,</b> <div style="text-align: center;"><b>Defendants.</b></div> <hr style="border: 0.5px solid black;"/>	: : : : : : : : : : :	<b>CIVIL ACTION</b>       <b>NO. 02-CV-4330</b>
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**PLAINTIFF, MICHELE RICCI'S RESPONSE TO DEFENDANTS, AETNA, INC.,  
D/B/A AETNA U.S. HEALTHCARE AND AETNA LIFE INSURANCE COMPANY'S  
MOTION FOR ENLARGEMENT OF TIME TO FILE AN ANSWER TO  
PLAINTIFF'S AMENDED COMPLAINT**

Plaintiff, Michele Ricci, by and through her attorneys, M. Mark Mendel, Ltd., hereby files this Response which incorporates in full the accompanying Memorandum of Law in response to Defendant Aetna, Inc., d/b/a Aetna U.S. Healthcare and Aetna Life Insurance Company's (hereinafter referred to as "Aetna") Motion for Enlargement of Time to File an Answer to Plaintiff's Amended Complaint.

**WHEREFORE**, plaintiff, Michele Ricci, requests this Court to enter the Order attached hereto and to grant such further relief as the Court deems just and appropriate.

**Respectfully Submitted:**

**M. MARK MENDEL, LTD.**

**BY:**

THEODORE A. SCHWARTZ, ESQUIRE  
Attorney I.D. No 09256  
**KENNETH B. GREAR, ESQUIRE**  
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**DATED:** \_\_\_\_\_  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHELE RICCI,	:	CIVIL ACTION
Plaintiff,	:	
VS.	:	
	:	
AETNA, INC., D/B/A	:	
AETNA U.S. HEALTHCARE AND	:	
AETNA LIFE INSURANCE COMPANY,	:	NO. 02-CV-4330
Defendants.	:	

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S  
RESPONSE TO DEFENDANTS, AETNA, INC., D/B/A AETNA U.S. HEALTHCARE  
AND AETNA LIFE INSURANCE COMPANY'S MOTION FOR ENLARGEMENT  
OF TIME TO FILE AN ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Plaintiff, Michele Ricci, by and through her counsel, submits this Memorandum of Law in support of her Response to Defendant, Aetna, Inc., d/b/a Aetna U.S. Healthcare and Aetna Life Insurance Company's (hereinafter referred to as "Aetna") Motion for Enlargement of Time to File an Answer to Plaintiff's Amended Complaint.

## I. FACTS

The facts as recited by the defendant in its Memorandum of Law are essentially correct and do not need to be restated here.

## II. LEGAL ARGUMENT

\_\_\_\_\_Defendant Aetna claims that it should now be allowed to file its Answer to Plaintiff’s Amended Complaint because there is no prejudice to the plaintiff, it will not delay the proceedings and its reason for delay was excusable. For the following reasons the plaintiff disagrees with defendant Aetna’s position as should this Court.

First, there is prejudice to the plaintiff as a result of defendant Aetna's failure to file a timely Answer to plaintiff's Amended Complaint. Plaintiff's Amended Complaint which was filed on

September 13, 2002 contains twenty-seven (27) numbered paragraphs, three (3) claims for relief and seven (7) multi document exhibits. It is absurd for defendant Aetna to conclude that there is no prejudice to the plaintiff as a result of defendant Aetna's failure to file an Answer to Plaintiff's Amended Complaint when it is plaintiff's right to know specifically defendant Aetna's position as to each allegation of plaintiff's Complaint. Otherwise, Federal Rule of Civil Procedure 8 specifically 8 (d) would in be meaningless. That particular Federal Rule provides that the averments in a pleading to which a responsive pleading is required other than those as to the amount of damage, are admitted when not denied in a responsive pleading. The plaintiff's Amended Complaint is a pleading to which a responsive pleading, an answer, is required. Defendant Aetna never responded in the form of an answer to plaintiff's Amended Complaint, therefore, the averments of plaintiff's Amended Complaint should be deemed admitted especially those averments regarding defendant Aetna's liability. The fact that F. R. C. P. 8 deems admitted the averments in a pleading to which a responsive pleading is required when not denied prevents the defendant from surprising the plaintiff with denials on the eve of Trial or as in the present case, on the eve of the Court's consideration of Cross-Motions for Summary Judgment. In the present case, the plaintiff has no idea how the defendant will respond to the specific averments of the plaintiff's Amended Complaint. Therefore, at this late date the plaintiff is prejudiced by the defendants' attempt to now answer the Amended Complaint.

Second, defendant Aetna's delay in filing its answer to plaintiff's Amended Complaint will delay the proceedings. One of the arguments in plaintiff's Motion for Summary Judgment is that since the defendant has not answered at least the liability averments of plaintiff's Amended Complaint under F. R. C. P. 8 (d), these averments are deemed admitted. Thus, the plaintiff in its

Motion for Summary Judgment requests that this Court enter Summary Judgment as a matter of law since all the averments of at least as to liability are admitted by defendant Aetna. Allowing defendant Aetna to now file its answer to plaintiff's Amended Complaint would potentially delay the proceedings since the plaintiff will have to have an opportunity to review the answer and respond accordingly under the Federal Rules of Civil Procedure, if necessary. Thus, instead of being at the end of the litigation and beginning the process of waiting for Your Honor's decision on the Cross-Motions for Summary Judgment and responses thereto, there is the potential that further Motions will be filed thus further delaying the conclusion of this litigation. Therefore, defendant Aetna's delay in filing its answer will have the effect of prolonging the proceedings in this case.

Third, Aetna admits that the reason for the delay in filing its answer to plaintiff's Amended Complaint was completely within Aetna's control. However, at the same time defendant Aetna asks for mercy by arguing that its minor "misstep" was reasonable because of extensive Motion practice in this case accompanied by the filing of plaintiff's Amended Complaint as well as the scheduling of deadlines for dispositive Motions and meeting those deadlines. Defendant Aetna's counsel does not claim that any major event either personal or business in nature outside of its control, created a situation in which defendant Aetna's counsel was unable to file a timely answer. In fact, Aetna's counsel admits that it prepared an Answer and thought it had been mailed to the Court but used the excuse that it was compiling evidence to file the Motion for Summary Judgment and Statement of Undisputed Facts and counsel simply did not check the Court's file to make sure the Answer had been actually filed. This type of neglect is not excusable.

### **III. CONCLUSION**

\_\_\_\_\_Therefore, for all of the foregoing reasons, plaintiff, Michele Ricci, requests that this Honorable Court enter the attached Order denying defendant's Motion for Enlargement of Time to file an Answer to plaintiff's Amended Complaint.

**Respectfully Submitted:**

**M. MARK MENDEL, LTD.**

**BY:**

**THEODORE A. SCHWARTZ, ESQUIRE**

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**DATED:** \_\_\_\_\_

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**MICHELE RICCI,**

**Plaintiff,**

**VS.**

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**AETNA U.S. HEALTHCARE AND**

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**Defendants.**

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**CIVIL ACTION**

**NO. 02-CV-4330**

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of Plaintiff's Response to Defendant Aetna's Motion for Enlargement of Time to File an Answer to Plaintiff's Amended Complaint was filed with the Court and forwarded to the below referenced counsel via First Class United States Mail, postage prepaid on September 12, 2003:

Patricia C. Collins, Esquire  
Elliott, Reihner, Siedzikowski & Egan, P.C.  
Union Meeting Corporate Center V  
P.O. Box 3010  
925 Harvest Drive  
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**M. MARK MENDEL, LTD.**

**BY:**

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**THEODORE A. SCHWARTZ, ESQUIRE**

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